United States Court of Appeals for the Second Circuit



APPELLEE'S APPENDIX

77-1036

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1036

VINCENT RIZZO,

Appellant,

---v.--

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR THE UNITED STATES OF AMERICA

ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.



INDEX TO APPENDIX

			PAGE
Docket Entries for 73 CR. 672			A-1
Minutes of Oral Decision of Judge Frederick var 12-29-76	n Pelt Bryan -	• • •	A-11
Indictment 73 CR. 672		• 4 • •	A-13
Minutes of Rizzo Plea - 10-9-73			A-33
Rizzo Motion - 7-30-76			A-56
Rizzo Motion - 12-16-76			A-67

			CRIM. (
. 5 No. 100 Ray.	· · · · · · · · · · · · · · · · · · ·		**************************************	XPT· ()	
	TED STATES		Fee U. S.: 25	??	
	ry.		Special AUS	N William	i.Ar n
				7.	
1) THOMAS ANATO.		TO STATES OFF			
1) THOMAS ANATO.		1:5	1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1		
Pay and de	endanos ele juge 2	JAII 26	$\cdot \cdot $		
ior a del		- 1. 20 ·	For Dejendant		
			For Defendant		
		J			
· .1		<i></i>			
STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DIER.
5.410.1100				<u> </u>	
S. 2 mailed	Clerk			\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	
7	Marshal		<u> </u>		\mathbb{I}_{X}
IS. 3 mailed 3 11-15, 3(12)					
Violation	Docket fee		\		P . I
Nitle			<u> </u>	-	$\ \cdot\ $
The state of the s		- :			世上
Sec page 2				+	
				1	
			 		# !
	<u> </u>	PROCEEDINGS		!	\
LATE TO THE TOTAL THAT	- ordered Usaled -		to all derts,	- Stews	rt. J.
B/W'S 133 1ed.					
7-12-73 Indictment ordere	d unsealed.			- : `	J
				-	
	_/				
/					-
				——————————————————————————————————————	<i>;</i>
					

73	3 CRIM 672 pa	e ?
DATE	en 1945 - Stander Stander i Stander specification i de la companya de la companya de la companya de la company La companya de la co La companya de la co	PROCEEDINGS
TETE:	CALLED RANKES OF TABLET	
(1)	TOMMASO AMATO 1	
2)	REMEGIO EECHI · 1	
2)	WILLIAM BENGAMAN + 1, 2,	3, 4, 7, 8
3. 1 L)	MARIO FOLIGNI . 1	
2 5)	LOUIS CITTLEMAN . 1, 2,	3, 4 ma -1803 EP A
(15T · 6)	HYMAN T. GRANT 1	
7 7)	EVELYN JACOBS 1	
., - 8)	JERRY MARC JACOBS 1 P	
	MANUEL RICHARD JACOBS 1, 5	62
: , 10)	LECPOLD LEDL . 1	
(۱۱ س	DOMINICK MANTELL . 1 "	TRAUS
12)	PATTY MARINO . 1, h	
· :: 13)	MARINA NEUBERT · 1	
<u>الله</u>	PETER RATA 1, 2	. 3, 4
<u>~ 15)</u>	VINCENT RIZZO . 1, 2	, 3, 4, 5, 7, 8
oug 16)	ERNEST SHINWELL · 1	
Titl	18:2314 & 2 tr	aspiracy to engage in racketeering organization and to e foreign and I.C. for transport of stolen securities(I) ansport in foreign and I.C. stolen securities, money, c. (2,3,4,5,6) 2 2 extortion in attempt to collect extension of credit
	i	avel in foreign and 1.U. to promote unlawful activities
	18:1952 tr	wit believe (6) extortion
	total counts: EIGHT.	
	ordered photogra	present. Pail fixed in the sum of \$50,000, secured by surety. Bail to be posted by h P.M. today. Deft. phed and fingerpriated Stewart, J.
7-18-73	M.R. Jacob :- Filed affida	rit for writ H/C ad Pros. Writ iss. & ret.7/23/7
7:18-73	M. Benjamin-Filed affida	vic for write H/C ad Pros. Writ is & ret. 7/23/
hi.		
1161		

DATE	PROCEEDINGS	
	Gittleman-Court enters plea of not guilty.	
	J.M. Jacobs- present and enters plea of not guilty. Pail fixed at \$25,000, surety bond in Calif.) Deft. ordered phosphare	
	and fingarprinted.	
	Mantalli-Court saters plea of not cuilty.	7.7 7 7 7 8 7 1 N
	Raia-(atty, present) Plends not guilty. Bail continued (\$50,00 and \$7,500, surety bond, All defts, 10 days for motions.	<u> </u>
	CASE ASSIGNED TO JUDGE PACMATION FOR ALL TON GOOD Ward, J.	
24-73	VINCENT RIZZO - Filed Affdyt, for W/H/C Ad Pros. Writ issued Ret. 7-31-73.	
-30-73	EVELYN JACOBS- (No Atty. Present) Co urt directs entry of Plea of Not Gui	lty.
	Motions 10 days after return of MacMahun, J. Hadb, J.	-1-1
-7-73	Filed the following received from U.S. Magistrate: docket # 73-995.	· · · · · · · · · · · · · · · · · · ·
	Docket Entry Sheet Notice of Appearance by Peter Griffin, 161 William St., N.Y.C. 96 for deft. PETER RAIA.	52-5442
	Appearance bons.	
8-10-73	PETER RAIR - Filed notice of motice to amend, temporarily the bail limit	5.
	nil I Accordance Bond from Central Dist of Calif. in the	
8-13-73*	VINCENT RIZZO - Produced on writ, Courtmenters PLFA OF NOT GUILTY, Rema Writ adj'd, until 8-14-73. WILLIAM BENJAMIN - Theodore Kreiger assigned . Deft PLFADS NOT GUILTY.	nded.
	Remanded. Writ satisfied. MANUEL R. JACOBS- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writ manuel R. JACOBS- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of NOT GUILTY. Deft. Remanded. Writer and Manuel R. Jacobs- Court enters PLEA of Not Guille R. Jacobs- Court enters PLEA of Not Gui	c adj'd. WYATT,J.
	LOUIS GITTLEMAN - (atty present) Pleads NOT GUILTY, Bail cont'd. deft	to be
9-14-73	pominick Mantell - (Atty Present) Pleads NOT GUILTY, Bail cont'd. Deft. Dominick Mantell - (Atty Present) Pleads NOT GUILTY, Bail cont'd. Deft. Dominick Mantell - (Atty Present) Pleads NOT GUILTY, Bail cont'd. Deft.	. to be
8-14-73	TACOBS- Court appoints Joseph J. Zedusser, Lega	1 Aid.
8-15-7	Magistrate's Proceedings and Appearance bytte	
8-2-73	962-5442.	
8-20-70	JERRY MARC JACOBS Filed notice of appearance by Stuart Edward Levi	Ison,
	Cont'd. on page 4	
		·
D C 1/2	Omninal & Banaruptey Couting Sheet	L"

Contid, on page 5

DATE	PROCEMBINOS
3-2-73	DOMINICE MANTELL Filed MANO END, on motionto compel disclosure: motion
	granted on consent, information to be provided by Oct. 25,73. So Ordered.
	MACHABON, J.
3-2-73	DCHINICI MANTELL - Filed MENO END on motion to disclose.
	Notion granted on consent. So Ordered. MacMASON, J.
<u> </u>	
`-2- <i>:</i> - 1	INTELL - Filed MENO EID. on ruction for imprection. The states motion
	13 dinied. *** So Ordered. MacMAdON, J.
0-2- 73	TO ACUTOR MINERAL BUILD SUP ON THE CO. T. C.
	MATELL - Filed MEMO END. on motion for transcription of minutes.
	ADESOR CERTER, MACORIUR, J.
9-2-73	DCHINICX MANTELL - Filed MEMO END. on motion to interview Govt. Witnesses.
	
	dotion by deft. Mantell to incarview witnesses Creekmore and Wilson is granted to the extent that the Gove.is directed to produce said witnesses
	before the court, at a mutually convenient time within ten (10) days, for
	an in camera examination by the court to determine whether they are willing
	to submit to the interviews sought. Motion in all other respects are denied,
	MacMAHOW, J.
1.7	
0-2-73	DOMINICK MANTELL - Filed MEMO END, on motion for psychiatric examination of Govt.
	witness. The within motion for psychiatric examination of the witness Creeksore
	and a bearing thereon is denied in all respects, ***, MacMABON, J.
•	
0-2-73	DOMINICK MANTELL - Filed MEMO END, on motion for disclosure of Grand Jury
	procedures. The within motion borders on the frivolous and is denied in all
	respects. So Ordered. MacMAHON, J.
10-2973	DOMINICA MANTELL - Filed MEMO END. on motion to file additional motion.
	Motion granted to the extent that the deft. Mantell may make additional motions
	out of time by oral application to the court, as directed at the pretrial
	conference held on Aug. 14-73. ***, So Ordered, MacMAHON, J.
10-2-73	DOMINICE MANIELL - Filed MEMO END on motion adopting co-deft. motions.
	The within motion was granted at the pretrial conference of Aug. 14-73 and is
	therefore repetitious and unnessary. The court adheres to its rulings at
	the pretiral conference, So Ordered, MacMAHON, J.
10-2-73	DOMINICK MANTELL- Filed MEMO END. on motion for B/P. The within motion is
	denied as repetitious. *** So Ordered. MacMABON, J. (n/m on 11 MEMO_End)
	<u> </u>
10-2-73	DOMINICK MANTELL - Filed MEMO END, on motion . change of venue.
	On balance of all the relevant factors, we sold that a transfer would not
	be in the interest of justice nor would it serve the convenience of the
	parties and witnesses. Accordingly, the within ; motion is denied. So
	Ordered. MacMARON, J.
10 5 3	
10-2-73	DOMINICE MANTELY Filed MEMO END, on motion for severance. The within motion
	is denied. with MacMAHON, J.
10-3-73	PETER RAIA - Filed adoption of co-deft. motion.
	VINCENT RIZZO - Filed deit. acknowledgement of constitutional rights.
	THE STATE OF THE S
17-10-13	VINCENT RIZZO - Filed derc. Begnowiedgewent of constitute at Figure

In Commission of Expensive Continuation officet

73 cris. 6	Page 6 MacHA-DN_I
DATE	PROCEILDROS
16-3-12	GUILTY to Cts. 1 & 8 only. Sentance referred to Judge BAIRANT, on - 11-20-73, MacMAHON, J.
., <u>.,.,</u>	1077 3. IACOBS - Filel michts, car 1/1/C Al Bros. Ret. 10-17-73.
10-12-73	Filed Govt, memo of law.
10-12-73	SETER RAIA - Filed MEMO END on motion for adoption. Motion disposed of in accordance with memo decision of this date, MacMARON, J.
10-12-27	EDUIS GITTLEMAN- 711ad Memo Emd. on motion for adoption. Motion disposed of in accordance with memo decision of this date. MacMAHON, J.
10-12-73	SOUIS GITTLYMAN - Filed News End, on motion to dismiss indictment; Motion disposed of in accordance with memo dicision of this date, MacMAHON, J.
10-12-73	LOUIS GITTLEMAN Filed notice of appearance by Stephen D. Miller, 360 N. Bedford Dr. Suite 204, Beverly Hills, Calif, 90210. (213)278-5100.
19-12-73	Filed NEMO; Defts. MANTELL AND GITTLEMAN move to dismiss the indictment on various grounds. Gittleman adopts all motions asserted by Mantell in addition to
	The first of the four grounds asserted by Mantell and adopted by Gittleman and Rais is that 18 U.S.C. Sect. 1962, a statute they are charged with violating, is unconstitutional. They claim that it is ambiguous and that it violates their right to due process by denying them a fair trial. We
	disagree. disagree. And Motion to dismiss count one on the ground that it is duplications is desied.
	Mantell, Gittleman and Rais also move to dismiss on the ground that the indictment is unconstitutionally vagur and ambiguous. We cannot agree with this contention.
	Accordingly, all of the motions of Mantell, Gittleman and Rais to dismiss the indictment are denied. No Ordered. MacMAHON, J. (See messo in file) (n/m to three defts.)
10-17-73	Filed transcript of record of proceedings dated Aug. 13-73.
10-17-73	Filed Govt, messo of lav,
10-17-73	HATTEL BICHARD JACOBS - Filed W/R/C Ad Pros- writ satisfied 8-21-73, MacMAHON, J.
10-13-73	Filed affect, of William I. Aromsald, Special Atty, U.S. Dept. of Justice.
10-13-73	Piled Govt's, memo of law,
10-18-73	Not considered on question of desqualification and Cagney. Stt Transcript of
	hearing of 10-16-73. MacMANON, J.

NOTICE SHOP THE PROPERTY AND ADDRESS OF THE PARTY OF THE	PROCEEDINGS
DATE *	
	VINCENT RIZZO - Filed CIA View 9 CO. Appointment and Toucher of Henry V. Character of He
-2-73	335 B'Way. NYC. 10013 Har AHQN, J.
THE RESERVE OF THE SECOND	
-5-73	Filed one sealed envelope and placed in vault Room 502. So Ordered. MacMARON.J.
	Des withdraws play of not guilty and PLIADS
-73	WILLIAM BENJAMIN (arry present) Deft, withdraws plea of not guilty and PLADS
	control to ct. I caly, produced at
	sene cite
- Zir Arvert Ve	GUILTY to ct.1 only. Produced on writ and aid'd. sene die, sentence adid.
	GUILTY to ch. one (1) only, Sentence adjd, sene die. P.S.I. Ordered. Dett.
**************************************	Trial adid. to Dec.3-73. MacHAHON, J.
1-2-73	PETER RAIA - Filed Supplemental B/P.
H HAMI	
1-2-73	TOWASO AVATO - Filed supplemental B/P.
	nilal notion for disclosure.
0-30-73*	
	PETER RAIA - Filed MEMO END on motion filed 10-30-73 for disclosure.
-13-73	PETER RAIA - Filed MEMO END on motion littled 10-30-31. The enumerated requests in the attached motion are decided as follows:1) The enumerated requests in the attached motion are decided as follows:1)
	The enumerated requests in the attained motion are decided government must furnish Granted to the extent that when a witness testifies the government must furnish Granted to the extent that when a witness testifies the government must furnish the governm
	Cranted to the extent that when a witness testified only; 2) Granted on consent; the deft. with the witness's conviction record only; 2) Granted to the extent that the
	the deft. with the witness's conviction record only, 27 3) (a) Denied; 3) (b) Denied; 4) Denied; 5) Granted to the extent that the
	3) (a) Denied; 3) (b) Denied; 4) Denied; 3) Grantes to stiffes. requested information must be made available when the witness testifies.
	requested information must be made available the distribution of the motion is denied in all other respects. So Ordered. MacMAHON, J.
17 70 77	
AND DESCRIPTION OF THE PROPERTY OF THE PROPERT	PETER RAIA (Deft(Atty, Present) withdraws plea of not guilty and PLEADS GUILTY
11-23-73	PETER RAIA (Deft(Atty, Present) withdraws plea of not guilty and PLEADS GUILTY to ct.1 only. P.S.I. Ordered . Deft. cont'd. on present bail of \$5,000.
	PETER RAIA (Deft(Atty, Present) withdraws plea of not guilty and PLEADS GUILTY to ct.1 only. P.S.I. Ordered . Deft. cont'd. on present bail of \$5,000. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J.
	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J.
	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J.
12-5-73	to ct.1 only, P.S.I. Ordered . Deft. come sign and MacMAHON, J. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73.
	to ct.1 only. P.S.I. Ordered . Dett. come to the common part of the co
12-5-73	to ct.1 only. P.S.I. Ordered . Dett. Come to the sentenced 1-31-74 at 10 a.m. MacMAHON, J. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each custody of the Atty Gen'l for imprisonment for a period of prison sentence
12-5-73	to ct.1 only. P.S.I. Ordered . Dett. Come to the sentenced 1-31-74 at 10 a.m. MacMAHON, J. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each custody of the Atty Gen'l for imprisonment for a period of prison sentence
12-5-73	to ct.1 only. P.S.I. Ordered . Dett. Cont. St. Dett. Cont. St. Defts. to be sentenced 1-31-74 at 10 a.m. MacMahon, J. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMahon, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YFARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence of Counts 1 & 7 are dismissed on motion of deft's counsel with
12-5-73	to ct.1 only. P.S.I. Ordered . Dett. Cont. of cont. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J.
12-5-73	Tiled transcript of record of proceedings dated 10-9-73. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment.
12-5-73	to ct.1 only. P.S.I. Ordered . Dett. Cont. 3.m. MacMAHON, J. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence of Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment.
12-5-73	Tiled transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73.
12-5-73	Tiled transcript of record of proceedings dated 10-9-73. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the Government.——Bryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. Journal of the County of t
12-5-73	Tiled transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. VINCONT RIZZO - Deft. (Atty Present) Filed Judgment and commitment.
12-5-73	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. /oorwested /Orwested // VINCENT RIZZO - Deft. (Atty Present) Filed Judgment and counitment. It is Adjudged that the deft. is hereby committed to the custody of the
12-5-73	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. /oorwested /Orwested // VINCENT RIZZO - Deft. (Atty Present) Filed Judgment and counitment. It is Adjudged that the deft. is hereby committed to the custody of the
12-5-73	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMARON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. /orwested It is Adjudged that the deft. is hereby committed to the custody of the Atty, Gen. or his authorized representative for imprisonment for a period Atty, Gen. or his authorized representative for imprisonment for a period
12-5-73	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. /ourmented /ourmented /ourmented Atty, Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of cts. 1 & 8 to run concurrently with each
12-5-73	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5,7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. Filed transcript of record pf proceedings dated Sept.18-73. Filed transcript of record pf proceedings dated Sept.18-73. Accommoded Atty, Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of cts. 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended on cts. 1 & 8. Deft. is placed Execution of prison sentence is suspended on cts. 1 & 8. Deft. is placed
12-5-73	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5,7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. Filed transcript of record pf proceedings dated Sept.18-73. Filed transcript of record pf proceedings dated Sept.18-73. Accommoded Atty, Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of cts. 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended on cts. 1 & 8. Deft. is placed Execution of prison sentence is suspended on cts. 1 & 8. Deft. is placed
12-5-73	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. /ourmented /ourmented /ourmented Atty, Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of cts. 1 & 8 to run concurrently with each
12-5-73	to ct.1 only, P.S.I. Ordered Det. Count. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the Government.——Bryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73.
12-5-73	to ct.1 only, P.S.I. Ordered Det. Count. ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5, 7 are dismissed on motion of deft's counsel with consent of the Government.——Bryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73.
12-5-73	ALL DEFTS. to be sentenced 1-31-74 at 10 a.m. MacMAHON, J. Filed transcript of record of proceedings dated 10-9-73. VINCENT RIZZO-Filed Judgment & Commitment (atty present)-Deft. is committed to the custody of the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS on each of Counts 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended. Counts 2,3,4,5,7 are dismissed on motion of deft's counsel with consent of the GovernmentBryan, J. Issued Commitment. Filed transcript of record pf proceedings dated Sept.18-73. Filed transcript of record pf proceedings dated Sept.18-73. Filed transcript of record pf proceedings dated Sept.18-73. Accommoded Atty, Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of cts. 1 & 8 to run concurrently with each other. Execution of prison sentence is suspended on cts. 1 & 8. Deft. is placed Execution of prison sentence is suspended on cts. 1 & 8. Deft. is placed

DVT3	PIECE SUNGS
-23-75_i	DOMINION - TELL - Filed consent to transfer for plea and sentence Under Rule
	^,
-28-73	LOUIS GITTLEMAN Filed consent to transfer for plea and sentence under Rule 20 to the Dist. of Calif. Central Dist. Los Angeles.
- 73-73	Mailed the two above copies to the Dist. as indicated.
-8-74	VINCENT RIZZO - Filed 2nd Corrected Judgment, and issued copies) It Is Adjudged that the deft. is sentenced to FIVE (5) YEARS on each of cts.
1/	1 & 8 to run concurrently with each other. Execution of prison sentance is
Charles - Comment	(1) DAY, subject to the standing probation order of this court, saint, s.
1-14-74	DOMINICK MANTELL - Filed t ceipt of record by Sou.Dist.of Fla.
1-14-74	LOUIS GITTLEMAN - Filed receipt of record by Central Dist. of Calif.
-13-74 Å	VINCENT RIZZO - Piled copy of J & C . Deft. delivered to Fed. Detention Hdgrts.
•••	Dec. 6-73.
12-31-73 -	VINCENT RIZZO - Filed true copy of W/H/C, writ satisfied 12-6-73, BRYAN, J.
-6-74	EVELYN JACOBS - Entered and filed nolle prosequi. MacMAHON, J.
1-30-74	The proper tacoes - Befr (Arry Present) Filed Judgment/and Issued copies.
1-30-1-	that the deft is hereby committed to the custody of the Rich.
•	- Lie authorized representative for imprisonment for a period of two
	Gen. of his authorized regions on count 1. Deft. is to stand committed until (2) YFARS AND FINED \$10,000. on count 1. Deft. is to stand committed until
et og professor se skriveres. Til	CONSECUTIVELY TO THE SENTENCES IMPOSED ON GETTING
	"U.S.D.C. for the Central Dist. of Calif. at Los Angeles on 12-22-07 and
1	Cts. 5 & 6 are dismissed on motion of deft's counsel with the consent of
	the Govt. MacidAHON, J.
1-30-74/	PETER RAIA - Deft. (Atty.present) Filed Judgment # 74 & issued copies.
1-20	the state of the date is hereby committee to the custody of the heart
	to a period representative for imprisonment for a period of rook
T	(4) YEARS and FINED \$10,000. on ct. 1. Deft. is to stand committed until the
	fine is paid or he is otherwise discharged according to law. Cts. 2,3, & 4 are dismissed on motion of deft's counsel with the consent of
	Cts. 2,3, & 4 are dismissed on motion of dead s
	the Govt. MacMAHON, J.
1-31-74	JERRY MARC JACOBS - Deft. (Atty. Present) Filed judgment and issued copies.
1-38-7-	
	for a period of TWO (2) YEARS, subject to the standing production order of
	this Court. MacMAHON, J.
1-30-74	HYMAN T. GRANT - Deft. fails to appear for sentencing. B/W Ordered. Bail revoked. MacMAHON, J.
	WILLIAM SENJAMIN - Sencence adjet, to March 5-74 at 10 a.g. MacMAHON, J.
	Filed Economics of soco. of street and and Paris Paris
(iiii	

DATE	
2-22-7-	Filed W/H/C/ ad Pros. Writ sa Harlad 1 19-75. Hacky 1991
3-4-74	RATA - Filed copy of J & B. Jure. A. I wood to Indecal December on 45 rts. 1-30-74.
3-2-14	It Is Adjudged that the deft, is baraby constitud to a control of the Atty. Gen, or his authorized representative for imprisonment for a period of TWO
10 2 - 00 	(2) YEARS and FINED SIG COD
	Cto. 2.3.4.7 & 8 are dismissed on mution by deft's. counsel with the consent of the Govt, MacMAHON, J.
4-10-74	BENJAMIN - Filed CJA Form # 20, Appointment and voucher for counsel. MacMAHON, J.
	closed statistically because
E-17-74	(x) defendants 1 18
	Ta all other respects this case
	is still pending.
	BENJAMIN - Filed W/H/C Ad Pros. Writ satisfied 8-13-73, WYATT,J.
5-1-74	RIZZO - Filed copy of Judgment with marshals return, copy delivered to 7.D.H. BENIAMIN - Filed copy of J/C with marshals return, deft. delivered to Somerset
3-1-14	Co.Jail, Sommerville, N.J. 3-5-74.
5-8-74	RYNIAMIN - Filed copy of I/C with marshals return, deft, delivered to Somerset Co. Jail, Sommerville, N.J. 3-5-74.
,5-23-74	JACOBS - Filed notice of motion for reduction of sentence.
5-29-74	JACOBS - Filed MEMO END on motion for reduction, Application denied, So Ordered. MacMAHON, J. (n/m)
7-15-24	Filed transcript of record of proceedings, dated 30, 1914
5-24-74	CRANT, Ryman Telegel statistically because
	() (1) (1) (1) (1) (1) (1) (1) (1) (1) (
	In all other respects this 2036
7:26.77	Filed trans Express record compared tarys, deated Feb. 30, 19.74
5-16-71:	Tel Palatine 12 a.m. 14, NY 1-30-74
	at a discontinuation object

PATE	1 POCAS.DINGS
.:-5:-/:	Blisa transcript of record of proceedings, dated the analysis of the
1 <u>-27-</u> ;;.	Deltis nution to examine for-desirable as desired letter dates 12-1-76 in reference to the little nution to examine for-desired caparts. Complete 1/2/2/2/2 in in all respects DELTE.
3-10-75_	Printing Son 1977 - Filed MOMO 120008379777 on Defit's letter dated 3-3-75 requesting 3
	Testinotes of his contones. The Matin is in all the mate desired - MacM. CX,1
	discharged from Probation and that the proceedings in the case be terminated—MacMARCH
4-20-76	Filed transmign of social of processings, island 7-23-7.5
-30-76	TMASO MATO
•	MARIO FOLOCOTT) Diplicate Bench Warrant's issued.
	MARINA MOUBBOOK)
12-21-75	Milad Notice of Motion to withdraw his plea of guilty. (Riggs)
12_16_7	Sizzo- Hearing held adj'd to 12-21-75 - Bryan, J.
12-21-7	5 Rizzo- Motion to vacate sentence grantel- notion to withdrew guilty plea adj'd to 12-23-75 Bryan, J.
12-27-7	
	Corrected 5 RIVO FILE / FIREMENT AND PROBATION / COMMITTENT OF TR the deft is hereby committed to the custody of the Atty Gen. for inor. for a peroid of FIVE (5) YEARS on to the custody of the Atty Gen. for inor. for a peroid of FIVE (5) YEARS on the country one and sight to min concurrently with eachother. Execution of
	prison sentence is suspended on counts one and eight. Deft is placed on pro- bation for a period of our (1) day on count one, and one (1) day on count eight, subject to the standing probation order of this court. Counts two through seven of the indictment have been dismissed on deft's motion with the consent
	of the Covt: Motion to withirs willty pleas pursuant to Fed. R. Crim. P. 32(d) in all respects denied30 CREATED FRELERICK VAN PELT ERVAN. all copies issued.
12-30-75	The second secon
7-4-7	There Full Meticale Affect To Line H. FRICE TURE BRYOU'S DEADL
	A THUE COP! RAYMOND R. BURGHANIE GIER
	Charley Clerk
	Services Clock

to the 1975 amendment.

Now, I have examined he minutes of the plea

before Judge McMahon with great care. They indicate to me

that the questions asked by Judge McMahon and the answers

given by Mr. Pizzo fulfill the require into of Rule 11 of

the Federal Rules of Criminal Procedure as it stood prior

The motion to withdraw the guilty plea entered before Judge McMahon in 73 Cr. 672 is in all respects denied. However, the motion to withdraw the plea of guilty entered before me in 72 Cr. 1332 is on a somewhat different posture. The indictment in that case charged a violation of 18 U.S.C. 1952.

As I read it, it charged in the conjunctive that Mr. Rizzo's conduct viol ted 18 U.S.C. Section 1952 Subsection 2, that is, travel and use of a telephone with intent to commit a crime of violence to further the unlawful activity of extortion -- and Subsection 3 of that provision which deals with the travel and use of a telephone to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of the unlawful activity of extortion.

When I explained the nate of the charge against him to Mr. Rizzo, I only mentioned that portion of the indictment which charged a violation of Subsection 2.

c

Now, the judgment ultimately entered reflects this. Mr. Rizzo, however, denied any intent to commit a crimof violence when his plea was taken, although he did finally admit that he had used threats of violence or extortion.

of 18 U.S.C., Section 1952. While the plea would have been adequate under Subsection 3 of that section, that portion of the charge was never specifically explained to Mr. Rizzo. Under the authorities, I am compelled to conclude that the plea was entered without an adequate understanding of the defendant of the nature of the charge to which he was pleading guilty and I hereby grant the motion to withdraw the guilty plea in 72 Cr. 1332.

Now, we are facedwith two situations. One with respect to 73 Cr. 672 in which I have denied the motion to withdraw the pla of guilty.

There remains the sentencing or the resentencing of Mr. Rizzo, pursuant to that charge.

On the other hand, we have the question, since

I have set aside the defendant's plea of guilty or permitted
him to withdraw his plea of guilty, in 72 Cr. 1332, the
defendant must now plead to that section.

Does he wish to plead?

MR. LEIGHTON: On behalf of the defendant,

Solo, its a planning of an arrange

UNITED SEARCE OF AMERICA

n maio. Romanio maio. Romanio maio.

BANGE FARAUMI, 1970: L. Luciu, 1870: T. MARIE, 1870: JANGE JANGE

ne den Rechest Jacobs, Leonger Estr., Rechester,

PARTY MARIES, DALLIA BUNDAT, D

YELL MAIN, and LEGS SHIPSON,

Defendants

73 Gr.

7 10 173

INTRODUCTION

- 1. Between on or about February 17, 1970 and June 23, 1970 a \$100,000 United States Treasury Bond was stolen, by persons to the Grand Jury unknown, from the United States mails while on route from Can Francisco, California to New York, New York.
- 2. On or about April 29, 1970, the following securities, having on that date a total market value of approximately 3565,575.00, were stolen from the New York, New York offices of Merrill, Lynch, Pierce, Fenner and Smith by persons to the Grand Jury marnown: 1,100 shares of Marional Aviation Company common stock, 400 shares of Unishops, Inc., common stock, 4,500 shares of General Portland General Company common stock, 1,100 shares of International Business Machines Company (15M) common stock.
- 3. Between on or about June 1, 1970 and June 23, 1970, a \$100,000 rederal Intermediate Gradit Pank Ford was stelen, by persons to the Grand Jury unknown, from the New York, New York office, of Bilic and Gompady.

States Treasury Note was stolen from the United States mails in Miami, Florida by one Robert Gudak.

4. Can be warm Jan 18, 2 to a con-

- 5. Between on or about July 10, 1970 and July 22, 1970, four \$10,000 United States Treasury Bills were stolen, by persons to the Grand Jury unknown, from the United States mails while en route from San Francisco, Galifornia to New York, New York.
- 6. Between on or about July 10, 1970 and July 22, 1970, a \$10,000 Federal National Mortgage Association Bond was stolen, by persons to the Grand Jury and own, from the United States mails while en route from New York, New York to Riviera Beach, Florida.
- 7. Between on or about July 23, 1970 and July 28, 1970, two \$100,000 United States Treasury Bills and six \$50,000 United States Treasury Bills were stolen from the New York, New York offices of Manufacturers Hanover Trust Company by persons to the Grand Jury unknown.
- 8. On or about August 12, 1970, the following securities, having on that date a total market value of approximately \$620,571, were stolen from the United States mails, by persons to the Crand Jury unknown, while en route from St. Louis, Missouri to New York, New York: 1,500 shares of Beneficial Finance Company common stock, 100 shares of California Computer Gorporation common stock, and 7,179 shares of First Union, Inc., common stock.
- 9. On or about September 3, 1970, the following securities, having on that date a total carket value of approximately \$3,831, were stolen from the United States mails, by persons to the Grand Jury unknown, while en route from Memphis, Tennessee to New York, New York: 158 shares of Capital Holding Corporation common stock.

necurities, having on that date a total market value of approximately 51,247,212, were stoled from the United States mails, by persons to the Grand Jury unknown, while en route from Los Angeles, California to New York, New York: 30,850 shares of Coca-Cola Bottling Company of Los Angeles common stock, 7,100 shares of Occidental Petroleum Corporation common stock and 6,000 shares of Norton Simon, Inc., common stock.

about November 30, 1970, six \$100,000 United States Treasury Bills were stolen, by persons to the Grand Jury unknown, from the New York, New York offices of Manufacturers Hancer Trust Company.

12. On or about July 13, 1971, the defendants WILLIAM BENJAMIN, HYMAN T. GRANT, JERRY MARC JACOBS, LOUIS GITTLEMAN and VINCENT RIZZO obtained approximately \$14.5 million of counterfeit securities, to wit, bonds representing obligations of Chrysler Corporation, Pan American Airways, Inc., American Telephone and Telegraph Company and General Electric Corporation.

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1970, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, TOMPASO AMATO, REMEGIO BEGNI, WILLIA, SPUJAMIN, MARIO FOLIGNI, LOUIS GITTLEMAN, HYMAN T. GRANT, EVELYN J.C.BS, JERRY MARC JACOBS, MANUEL RICHARD JACOBS, LEOPOLD LEDL, DOMINI & MANTELL, PATTY MARINO, MARINA NEUBERT, PETER RAIA, VINCENT RIZZO and ERNEST SHERWELL, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with Maurice Ajzen, Alfred Barg, Winfried Erro, Sugotph Gaschall, Paul King and Phillip Wilson, each of whom is named as a co-conspirator herein but not as a defendant, and with other persons whose names are to the Grand Jery known and maknown, to commit certain offenses against the United States, to wit, to violate Title 15, United

that the detendance as co-conspirators would transport in interatate and foreign commerce goods, wares, perchandise, securities and morey, of the value of \$5,000.00 and more, knowing the same to have been stolen, converted and taken by transit.

- 3. It was further a part of said conspiracy that the defendants and co-conspirators, with unlawful and fraudulent intent, would transport in interstate and foreign commerce falsely made, forged, altered and counterfeited securities, knowing the same to have been falsely made, forged, altered and counterfeited.
- the defendants and co-conspirators would unlawfully, wilfully and knowingly buy, receive, conceal and unlawfully have in their possession articles and things contained in packages, bags and mail which had been stolen, taken, embezzled and abstracted from the taril, mail routes and authorized depositories for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted.
 - the defendants and co-conspirators, being employed by and associated with an enterprise engaged in, and the activities of which affected interstate commerce, to wit, a group of individuals including the defendants and co-conspirators herein and others, all of whom were associated in the fencing and illegal distribution of large quantities of stolen and counterfeit securities, would conduct and participate, directly and indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity, to wit, racketeering acts in violation of the first and third paragraphs of Title 18, United States Gode, Section 2314.

- 6. It was further a part of said conspiracy that the defendants WILLIAM BENJAMIN and VINCENT RIZZO would participate in the use of extortionate means to collect and attempt to collect an extension of credit and to punish Alfred Barg and Winfried Ense for the nonpayment thereof.
- 7. It was further a part of said conspiracy that the defendants WILLIAM BENJAMIN and VINCENT RIZZO would unlawfully, wilfully and knowingly travel and cause travel and would use and cause to be used the telephone and the mails, in interstate and foreign commerce, with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, to wit, extortion in violation of Sections 891 ff of Title 18, United States Code and of New York State Penal Law, Section 155.40, and that thereafter the defendants WILLIAM BENJAMIN and VINCENT RIZZO would perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the said unlawful activities.
 - Among the means by which the defendants carried out said conspiracy were the following:
 - (a) The defendants WILLIAM BENJAMIN, LOUIS
 GITTLEMAN, EVELYN JACOBS, JERRY MARC JACOBS, MANUEL RICHARD
 JACOBS, DOMINICK MANTELL, PATTY MARINO, PETER RAIA, VINCENT
 RIZZO and ERNEST SHINWELL arranged on a continuing basis to
 obtain and receive many millions of dollars worth of stolen
 and counterfeit securities and to distribute them in Europe,
 Panama and the United States through and with the assistance
 of the defendants TOMMASO AMATO, REMEGIO BEGNI, MARIO FOLIGNI,
 HYMAN T. GRANT, LEOPOLD LEDL and MARINA NEUBERT, and of coconspirators Maurice Ajzen, Alfred Barg, Winfried Ense,
 Rudolph Guschall and Paul King.

(ii) On or about June 20, 1970, in los Angeles, and ironaid, the defendants allumated and Jacob and a Jacob and Intermediate Credit Bank Bond which had been stolen from the New York, and York offices of Blair and Company between on or about bebruary 17, 1970 and on or about June 23, 1970.

The defendants WILLIAM BENJAMIN and LOUIS GITTLEMAN are defendants WILLIAM BENJAMIN and LOUIS of the proceeds the said stolen securities, keep five percent of the proceeds as his commission and turn over the balance of said proceeds to the defendant Louis GITTLEME. On or about June 20,1970, co-conspirator Paul King arranged for the sale of said stolen securities at the Los Angeles, California offices of Goodbody and Genaphy and the North Hollywood, California branch of the Valley National Bank and received approximately \$169,000 in payment for them. Shortly thereafter co-conspirator Paul King delivered to the defendants WILLIAM BENJAMIN and LOUIS GITTLEMAN approximately \$162,000 in cash.

travelled from Lor Angeles, California to New York, New York at the request of the defendant WHILIAM BENJAMIN. While in New York City co-conspirator Paul King was introduced by the defendant WHILIAM SENJAMIN to the defendants PETER RAIA and VINCENT RIZZO. During these meetings co-conspirator Paul King was advised by the defendants PETER RAIA and VINCENT RIZZO that they would be able to supply him with additional securities similar to the two certificates previously delivered to him by the defendants MILIAM BENJAMIN and LOUIS GITTLEMAN. Pursuant to the instructions of the defendant PETER RAIA, co-conspirator Paul King returned to Los Angeles, California where he was to await the delivery of additional stolen securities.

og erne ing an or about July 20, 1970, in Los Augeles, Calloraia the defendant LOUIS GITTLEIVE made several deliveries of stolen securities to co-conspirator Paul King. These securities consisted of two \$100,000 United States Treasury Bills and six \$50,000 United States Treasury Bills which had been stolen from the New York, New York offices of Manufacturers Hanover Trust Company on or about July 28, 1970; a 510,000 United States Treasury Note wich had been stolen from the United States mails in Miami, Florida on or about July 10, 1970; four \$10,000 United States Treasury Sills which had been stolen from the United States mails while en route from San Francisco, California to New York, New York, between on or about July 10, 1970 and July 22, 1970; and a \$10,000 Federal National Hortgage Association bond which was stolen from the United States mails, on or about July 10, 1970 while en route from New York, New York to Riviera Beach, Florida. Between on or about July 22, 1970 and on or about August 20, 1970 co-cor | irator Paul King arranged for the sale of said stolen securities to the Morgan, Olmstead, Kennedy and Gardner securities firm in Los Angeles, and thereafter delivered to the condant Louis GITTLEMAN the sum of approximately \$500,000 in cash and checks, which represented the proceeds of said sales, less a five percent commission which the defendants BENJAMIN and GITTLEMAN agreed to pay to Paul King.

(c) In the fall of 1970, in Munich, Germany, the defendant MANUEL RICHARD JACOBS displayed to co-conspirator Winfried Ense three \$100,000 United States Treasury Bills which had been stolen from Hamufacturers Hanover Trust Company, New York, New York and requested the said Winfried Ense to cash one of the treasury bills. Upon cashing one of the said treasury bills at the Continental Bank of Brussels, co-conspirator Winfried Ense delivered to the defendant MANUEL RICHARD JACOBS approximately \$90,000.

(d) In the fall of 1970, the defendants WILLIAM London, England MACOBS and Prink WAIA cravelled to London, England where they met the defendant MTMAN T. GRANT and solicited his assistance in disposing of a quantity of Coca-Cola Bottling Company of Los Angeles compon stock certificates which had been stolen from the United States mails on or about October 14, 1970, while en route from Los Angeles, California to New York, New York.

(e) In the fall of 1979, the defendants WWWLL RICHARD JACOBS, DOMINICK MANTELL and ERNEST SHINGELL transported to Panama, and placed on deposit with the Banco Exterior in Panama as collateral for a loan, common stock certificates representing 30,350 shares of Coca-Cola Bottling Company of Los Angeles, 6,000 shares of Norton Simon, Inc., and 7,100 shares of Occidental Petrolema Corporation, all of which had been stolen from the United States mails on or about October 14, 1970 while en route from Los Angeles, California to New York, New York. Shorely thereafter the defendants DOMINICK MANTELL and ERNEST SHINGELL advised co-conspirator Phillip Wilson that the stolen character of said securities had been discovered at the Banco Exterior, and requested that Phillip Wilson supply them with a quantity of counterfeit securities to be substituted by them as collateral for said loan at the Banco Exterior. Thereafter co-conspirator Wilson delivered to the defendants MANETIL and SHINWELL forged and counterfeit Bank of Sark notes in the amount of \$2 million payable to Banco Exterior and \$10 million of worthless first Liberty Fund stock certificates and forwarded to Banco Exterior in Panama false documents representing that the said First Liberty Fund certificates had been acquired by Intercopa, S.A., a company owned and controlled by the defendant ERNEST SHIMMALL.

November 30, 1970 the detendants WILLIAM BELUAMIN, LOUIS GITTLENGY and PATTY MARINO delivered to co-conspirator Paul King, in los Angeles, California three \$100,000 United States Treasury Bills which had been stolen from the New York, New York offices of Manufacturers Manover Trust Company between on or about July 17 and Movember 30, 1970.

The defendants WILLIAM BENJAME, LOUIS
GITTLEMAN and PARTY MARINO arranged with co-conspirator Paul
King for the sale by him of said Treasury Bills and for the
delivery of the proceeds thereof to the defendant PATTY MARINO
in Los Angeles. Thereafter the defendant PATTR RAIA travelled
to Los Angeles, California to discuss the disposition of the
said Treasury Bills with co-conspirator Paul King.

(5) In or about January, 1971, the defendants MANUEL RICHARD JACOBS and ERNEST SHINWELL transported to Los Angeles, California and delivered to Merbert Creekmore, who was to arrange for a loan using them as collateral, common stock certificates representing 1,400 shares of Beneficial Finance Company, 100 shares of American Hospital Supply Corporation and 100 shares of Galifornia Computer Corporation, all of which had been stolen from the United States mails on or about August 12, 1970 while on route from St. Louis, Missouri to New York, New York; 1,000 shares of National Aviation Corporation, 3,000 shares of General Portland Cement Corporation and 300 shares of Unishops, Inc., all of which had been stoler from the New York offices of Perrill, Lynch, Pierce, Fenner and Smith on or about April 29, 1970; and 157 shares of Capital Holding Corporation which had been stolen from the United States mails on or about September 3, 1970 while en route from Heaphis, Tennessee to New York, New York. Upon discovery by Herbert Creekmore that said securities were stolen securities he returned them to the defendants MANUEL RICHARD JACOBS and ERNEST SHIRWELL in Los Angeles, California.

(a) in a more cares, erre, in capiter, wereary, the desendant of the manifest delivered to co-comparators Runo) ph Ganchell and Aliren Bary common stock certificates representing 7,500 mains of Good-Cola Bottling to pany of Los Angeles and 5,000 shores of Occidental Petroleum Corporation, all of which had been stolen from the United States mails on or about October 14, 1970 while on route from Los Angeles, California to ass York, New York: 5,000 shares of General Portion Cement Conqueny, 300 shares of Unishops, Inc., and 100 shares of National Aviation Corporation, all of which had been stolen from Merrill, Lynch, Pierce, Fenner and Smith on or about /pril 29, 1970; 1,400 shares of Beneficial Finance Company, 100 shares of American Hospital Supply Corporation, 100 shares of California Computer Corporation and 7,179 shares of First Union, Incorporated, all of which had been stolen from the United States mails on or about August 12, 1970 while en route from St. Louis, Missouri to New York, New York; and 158 shares of Capital Holding Corporation which had been stolen from the United States wails on or about September 3, 1970.

conspirators knowlph Guschall and Alfred Barg arranged that coconspirator Alfred Barg would pay to the defendant MANUAL
RICLARD JACOBS thrity-live percent of the current market value
of the said securities and that he would then use said securities as collateral for loans that he would seek to obtain in
European Lanks, and that Barg would not attempt to sell the
stock in the United States. As consideration for having introduced the defendant MANUAL RICLARD JACOBS to co-conspirator
Alfred Barg, co-conspirator kndolph Guschall received from
the defendant DANUAL RICHARD JACOBS a common stock certificate
representing los shares of International Business Eachines
Corporation which had been stolen on or about April 29, 1970
from the above-mentioned offices of Merrill, Lynch, Pierce,

Alir a Bary asposited the securities reterior to in paragraph (a) supra in the Glarner Continental Bank of Baitzerlan to the account of rinag, a corporation oaned and controlled by the said Alirea Barg, in order to secure loans to be made by the Glarner Bank to Finag. Thereafter co-conspirators Alirea Barg and Eudolph Guschall withdrew the securities from the said Glarner Bank and delivered them to co-conspirator matrice Ajzen who in turn delivered them to the detendant IMAGUEL RIGHARD JACONS.

and MARKEL RIGHTED JACOBS arranged to provide approximately \$14.5 million worth of counterfeit American "blue chip" bonds to defendant LEOPOLD LEDL, who represented that he would dispose of said bonds through a source within the Vatican in Rome, Italy, who, according to LEDL, had specifically requested counterfeit bonds. Thereafter the defendants WILLIAM BENJAMIN, JERRY MARC JACOBS and NAMUEL RICHARD JACOBS Let with defendant LEOPOLD LEDL and co-conspirators Maurice Ajzen and Wintried Ease in London, England, at which time it was arranged that the defendant MANUEL RICHARD JACOBS would deliver the counterfeit bonds to defendant LEDL.

In or about July, 1971, the defendant HYMAN

T. GRAFT travelled from London, England to Pailadelphia,

Pennsylvania where he met with the defendant WILLIAM BENJAMIN.

Thereafter the defendants BENJAMIN and GRAFT travelled to

Los Angeles, Galifornia where they met with the defendants

LOUIS GITTLEMAN, EVELYN JACOBS and JERRY MARC JACOBS.

Thereafter in Los Angeles, the defendants WILLIAM BENJAMIN,

LOUIS GITTLEMAN, HYMAN T. GRANT, EVELYN JACOBS and JERRY MARG

JACOBS arranged that after the defendant BENJAMIN had personally

turned the necessary signatures to the SIA.5 million in counter
Teil bonds the stid bonds would be taken to larrope by the des

further arranged that defendant GRANT would act as the foreign language interpreter for the defendant JERRY MARC JACOBS, that the defendant JURRY MARC JACOBS would be responsible for collecting payment upon disposition of the counterfeit body, and that the defendant GITTLEMAN would accompany the defendants GRANT and JERRY MARC JACOBS to Europe as their bodyguard.

- (1) In or about July, 1971, the defendants GRANT and JERRY MAKE JACOBS rescelled from Los Angeles, Californ's to Minich, Germany with approximately \$14.5 million in counterfeit American bonds, to wit, certificates of Chrysler Corporation, Pan American Airways, Inc., American Telephone and Telephone Company, and General Electric Corporation.
- defendants GRANT and JERRY MARC JACOBS were met at the Munich airport by co-conspirator Maurice Ajzen and thereafter the defendants GRANT and JERRY MARC JACOBS and co-conspirator Maurice Ajzen flew, together with the counterfeit bonds, from Munich, Germany to Rome, Italy, where they met the defendants TOMMASO AMATO, LEOPOLD LIDL and MARINA NEUBERT and co-conspirator Winfried Enge.
- (n) After their arrival in Rome, Italy, the defendants TORMASO AMATO and LEOPOLD LEDL and co-conspirator Maurice Ajzen met with the defendant REMEGIO BENGI, delivered to BENGI samples of said counterfeit bonds, and thereafter obtained BENGI'S assent that the bonds were satisfactory.
- (6) Thereafter in July, 1971 the defendants
 TOMMASO AMAIO, HYMAN T. GRANT, JERRY MARC JACOBS, LEOPOLD LEDL
 and MARINA NEUBERT and co-conspirators Maurice Ajren and
 Wintried Ence travelled from Rome to Turin, then to Milan
 and back to Rome in an unsuccessful effort to dispose of the
 counterfeit bends through the source that the defendant LEDL
 stated he had in the Vatican.

- by the Me.endamic TOUMASO AMATO, HYMAN T. GRATT, JERRY MARG

 JACOBS, LEOPOLD LEDL, MARINO NEUBERT and co-conspirator

 Maurice Ajzen that the defendants AMATO and NEUBERT would dispose of the bonds; that co-conspirator Ajzen would remain in

 Rome as the representative of the defendant JERRY MARG JACOBS until such time as he received payment for said counterfeit bonds from the defendants AMATO and NEUBERT; that the defendants LEDL and GRANT would return to their respective homes in Austria and England; and that the defendant JERRY MARG JACOBS would travel to Munich where he would await the delivery of payment for the bonds by co-conspirator Ajzen.
- AMATO introduced co-conspirator Maurice Ajzen to the defendant MARIO FOLIGNI in order to utilize the services of FOLIGNI in disposing of said bonds through the Vatican Bank in Rome.

 In order to test the acceptibility of said counterfeit bonds, the defendant MARIO FOLIGNI then opened an account at the Handels Bank in Zurich, Switzerland in his name and in the name of Monsignor Professor Avocato Mario Fornasari and placed on deposit therein approximately \$1.5 million of said counterfeit bonds, to wit, bonds representing obligations of American Telephone and Telegraph Company, Chrysler Corporation, General Electric Company and Pan American Airways, Inc., which he had received from the defendants TOMMASO AMATO and MARINA NEUBERT in Zurich, Switzerland.
- (r) In or about September, 1971, after the Handels
 Bank advised the defendant MARIO FOLIGNI that said bonds had
 been determined to be counterfeit, the defendant FOLIGNI arranged
 to have one Alfee Marchini deposit with the Bank DiRoma approximately \$2.5 million of said counterfeit securities, representing
 obligations of American Telephone and Telegraph Company and
 General Electric Company, in order to test the acceptability
 of the bonds in Italy.

- (s) In or about February, 1972, the defendant VINCELL RICZO travelled from New York, New York to Manich, Germany where he met with co-conspirators Altred Barg and Windried Ease and demanded payment of \$350,000 for the counterfeit and stolen securities which had been delivered as previously described herein. At or about this time the defendants BENJAMIN and RIZZO arranged that the defendant BENJAMIN would instruct co-conspirators Ense and Barg that if the defendant R1220 did not return with the said \$350,000 Ense and Barg might be murdered. As a result of the fear created in the minds of co-conspirators Barg and Ense by the defendants BENJAMIN and RIZZO co-conspirator Barg signed over to the defewlant VINCENT RIZZO certain rights to the profits of Finag S.A., a European company engaged in the construction of homes in southern France, owned and controlled by co-conspirator Alfred Barg: opened a bank account in the name of the defendant VINCENT RIZZO at the Ottoderks and Company Bank in Munich; and agreed that deposits of money would be made in the said account by co-conspirators Barg and Ense for the benefit of the defendant VINCENT RIZZO. At or about this time the defendant VINCENT RIZZO offered to supply co-conspirators Alfred Barg and Winfried Ense with as many stolen United States Treasury Bills as they might wish to order from him.
 - (t) Thereafter in or about May, 1972, upon the failure of co-conspirators Barg and Ense to make the required deposits at the Ottoderks and Gompany Bank, the defendant RIZZO travelled to Munich, Germany in an attempt to collect payment for said stolen and counterfest securities from co-conspirators Barg and Ense.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed by the defendants.

- In or about July, 1970 the defendants WILLIAM BENJAMIN and VINCENT RIZZO set with co-conspirator Paul King at Toots Shor's Restaurant in Manhattan, New York.
- 2. In or about July, 1970, the defendants WILLIAM BENJAMIN and PETER RALA met with co-conspirator Paul King in the vicinity of 1681 Broadway, New York, New York.
- 3. In or about the fall of 1970, the defendant MANUEL RICHARD JACOBS travelled to Munich, Germany where he met with co-conspirator Winfried Ense.
- MANUEL RICHARD JACOBS, WILLIAM BENJAMIN, HYMAN T. GRANT and PETER RAIA met in London, England.
- 5. In or about the fall of 1970, the defendants MANUEL RICHARD JACOBS, DOMINICK MANTELL and ERNEST SHINWELL travelled to Panama.
- 6. On or about January 8, 1971, the defendants
 MANUEL RICHARD JACOBS and ERNEST SHINWELL met with Herbert
 Creekmore at the Century Plaza Hotel in Los Angeles, California.
- 7. In or abo the spring of 1971, the defendants WILLIAM BENJAMIN, JERRY MARC JACOBS, MANUEL RICHARD JACOBS and LEOPOLD LEDL met at the Churchill Hotel in London, England.
- 8. In or about July, 1971, the defendants WILLIAM BENJAMIN and HYMAN T. GRANT travelled from Philadelphia, Pennsylvania to Los Angeles, Galifornia where they met with the defendants LOUIS GITTLEMAN, EVELYN JACOBS and JERRY MARC JACOBS.
- 9. In or about July, 1971, the defendants HYMAN T. GRANT, JERRY MARC JACOBS and LEOPOLD LEDL and co-conspirators

Windried Ease and Maurice Ajzen travelled to Mone, Italy where they met with the defendants TOMMASO AMATO, REMEGIO BEGNI, and MARINA NEUBERT.

- 10. On or about July 27, 1971, the defendant MARIO FOLIGNI opened an account at the Handel's Bank in Zurich, Switzerland.
- 11. On or about February 11, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO made reservations to depart for Munich, Germany via Lufthansa Airlines on February 26, 1972.
- 12. On or about February 11, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO made reservations to stay at the Palace Hotel in Munich, Germany commencing on or about February 26, 1972.
- 13. On or about February 25, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO telephoned an overseas operator.
- 14. On or about February 26, 1972, in the vicinity of 201 Avenue A, New York, New York, the defendant VINCENT RIZZO travelled to John F. Kennedy Airport where he boarded a Lufthansa Airlines flight to Munich, Germany.
- 15. On or about March 12, 1972, the defendant VINCENT RIZZO placed a telephone call to the defendant WILLIAM BENJAMIN in Philadelphia, Pennsylvania from the vicinity of 211 Avenue A, New York, New York.
- 16. On or about March 17, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO had a telephone conversation with the defendant WILLIAM BENJAMIN.
- 17. On or about March 22, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO had a telephone conversation with the defendant WILLIAM BENJAMIN.

- 15. On or about March 24, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO had a telephone conversation with the defendant WILLIAM BENJAMIN.
- 19. On or about April 9, 1972, the defendant VINCENT RIZZO placed a telephone call to the defendant WILLIAM BENJAMIN in Philadelphia, Pennsylvania from Munich, Germany.
- 20. On or about April 10, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO had a telephone conversation with the defendant WILLIAM BENJAMIN.
- 21. On or about April 18, 1972, in the vicinity of 211 Aven: A, New York, New York, the defendant VINCENT RIZZO had a telephone conversation with the defendant WILLIAM BENJAMIN.
- 22. On or about May 3, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO had a telephone conversation with the defendant WILLIAM BENJAMIN.
- 23. On or about May 15, 1972, in the vicinity of 211 Avenue A, New York, New York, the defendant VINCENT RIZZO placed a telephone call in order to make flight reservations to Munich, Germany.
- 24. On or about May 21, 1972, the defendant VINGENT RIZZO travelled to John F. Kennedy Airport, Queens, New York, where he boarded a Lufthansa Airlines flight for Munich, Germany.
- 25. On or about December 1, 1972, at 261 Broadway, New York, New York, VINCENT RIZZO authorized David M. Markowitz, an attorney, to write a letter to co-conspirator Alfred Barg.
- 26. On or about January 15, 1972, at 261 Broadway,
 New York, New York, VINCENT RIZZO authorized David M. Markowitz,
 an attorney, to write a letter to co-conspirator Alfred Barg.

(Title 18, United State Code, Sections 1962 and 371)

COUNT TWO

The Grand Jury further charges:

Between on or about June 1, 1970 and June 23, 1970, in the Southern District of New York, the defendants WILLIAM BENJAMIN, LOUIS GITTLEMAN, PETER RAIA and WINCENT RIZZO caused to be transported and transported in interstate commerce, to wit, from New York, New York to Los Angeles, California the following securities; one \$100,000 United States Treasury Bond and one \$100,000 Federal Intermediate Credit Bank Bond, knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2)

COUNT THREE

The Grand Jury further charges:

Petween on or about July 22, 1970 and August 20, 1970, in the Southern District of New York, the defendants WILLIAM BENJAMIN, LOUIS GITTLEMAN, PETER RAIA and VINCENT RIZZO caused to be transported and transported in interstate commerce, to wit, from New York, New York to Los Angeles, California the following securities; two \$100,000 United States Treasury Bills, six \$50,000 United States Treasury Bills, one \$10,000 United States Treasury Bills and one \$10,000 Federal National Mortgage Association bond, knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2)

COUNT FOUR

The Grand Jury further charges:

Hetween on or about October 1, 1970 and November 30, 1970, in the Southern District of New York, the defendants WILLIAM BENJAMIN, LOUIS GITTLEMAN, PATTY MARINO, PETER RAIA,

and VINCENT RIZZO caused to be transported and transported in interstate commerce, to wit, from New York, New York to Los Angeles. California, three \$100,000 United States

Treasury Bills, knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2)

COUNT FIVE

The Grand Jury further charges:

Between on or about October 1, 1970 and on or about November 30, 1970, in the Southern District of New York, the defendants MANUEL RICHARD JACOBS and VINCENT RIZZO caused to be transported and transported in interstate and foreign commerce, to wit, from Brussels, Belgium to Chase Manhattan Bank, New York, New York a \$100,000 United States Treasury Bill knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2)

COUNT SIX

The Grand Jury further charges:

March 24, 1972, in the Southern District of New York, the defendant MANUEL RICHARD JACOBS caused to be transported and transported in interstate and foreign commerce, to wit, from Germany to the Southern District of New York a common stock certificate representing 100 shares of International Business Machines, Inc., having a value in excess of \$5,000, knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2)

20.

COLL CLAIN

The Grand Jury further charges:

From on or about August 1, 1970 to the date of filing of this indictment, in the Southern District of New York and elsewhere, the defendants WILLIAM BENJAMIN and VINCENT RIZZO unlawfully, wilfully and knowingly participated in the use and express and implicit threats of use of violence and other criminal means to cause harm to the person, reputation and property of Alfred Barg and Winfried Ense, to collect and attempt to collect extensions of credit from Alfred Barg and Winfried Ense.

(Title 18, United States Code, Sections 894, 891(7) and (2))

COUNT EIGHT

The Grand Jury further charges:

From on or about June 1, 1971 to the date of filing of this indictment, in the Southern District of New York and elsewhere, WILLIAM BENJAMIN and VINCENT RIZZO, the defendants, unlawfully, wilfully and knowingly did travel and cause travel between the State of New York and Munich Germany, and did use the telephone and the mail in interstate and foreign commerce with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the unlawful activities, to wit, extortion in violation of Title 18, United States Code, Section 891 ff and of the New York State Penal Law, Section 155.40, and thereafter the said defendants did perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activities.

{ (Title 18, United States Code, Sections 1952 and 2)

glacell & Baller

PAGE J. Glaves Attorney for the Southern Listrict of New York

pgcg

1

2

UNITED STATES OF AMERICA

VS.

5

4

3

VINCENT RIZZO.

6

7

BEFORE:

Hon. Lloyd F. MacMahon, D.J.

New York, N. Y., October 9, 1973, 4:00 P.M.

73 Crim. 672

9

10

For the Government: William I. Aronwald, Esq.,

For the Defendant: Gilbert Epstein, Esq.,

12

13

14

15

16

17

11

Mr. EPSTEIN: Your Honor, I have conferred with my client, Mr. Rizzo. Mr. Rizzo, at this time, desires to withdraw his previously entered plea of not guilty and is offering to plead guilty to the first and third counts of the indictment before the court.

18

THE COURT: Proceed.

19

I have to Mr. Rizzo the acknowledgement of his rights. He

MR. EPSTEIN: I should indicate to the court that

21

20

does so acknowledge having been so advised. If the court

22

wishes, he will execute that acknowledgement in open court

23

in the presence of the court and, in addition to that, I have

24

read to him on two separate occasions the full text of both counts 1 and 3 of the indictment before the court, and he is

1 phcg 2 fully familiar with the charges, with the elements of the 3 charges, and the penalties involved. 4 I should indicate, further, that the plea being 5 offered on count 1 is for violation of Title 18 Section 371, 6 which has a maximum sentence of five years, the general 7 conspiracy count. 8 BY THE COURT: Q Mr. Rizzo, what are you charged with in count 17 10 Do you understand what you are charged with? 11 Conspiracy. 12 Q To do what? 13 Knowingly, about some stocks, bonds, that I knew 14 about them, that they were stolen. 15 Transporting securities knowing they were stolen? 16 I found out they were stolen, your Honor. 17 You knew that? Q 18 Yes, your Honor. 19 You know that's what you are charged with. That's 20 what you are charged with. I am not asking you whether you 21 did it. Tell me what you are charged with. 22 A I am charged with conspiracy, as far as I under-23 stand.

Of knowingly knowing about stolen securities,

Conspiracy to do what?

0

1	paca
2	dealing in stolen securities.
3	You are charged with, among other things, conspir-
4	acy to transport him interstate and foreign commerce
5	securities and money of a value of \$5,000 or more knowing the
6	same to have been stolen, converted, and taken by fraud.
7	Do you understand that that is what you are
8	charged with?
9	A Yes, your Honor.
10	o Further, you transported in interstate and foreign
11	commerce falsely made forged altered counterfeited securitie
12	knowing that they were falsely made, forced, and counter-
13	feited. Do you understand that?
14	λ Yes.
15	Q That's what you are charged with.
16	Have you read this indictment against you?
17	A I read it 20 times. I tried to see where I fit
18	in. A some of the some manager and the probability of the south th
19	Q You understand what you are charged with? "hat's
20	all I am concerned with now.
21	λ Yes.
22	() Do you understand that there are four other
23	charges in here? There are a number of other charges.
24	You have in there possession of articles, things, contained
25	in tackages, bags, and mail which had been stolen, taken,

2

3

4

5

6

7

8

9

10

11

12

13

14 15

16

17

18

19

20 21

22

23

24

25

paca embezzled, and abstracted from the mail, knowing that they had been stolen, taken, and embezzled and abstracted. Do you understand that? That's what you are charged with.

A Yes, sir.

Q You are aslo charged with participating directly or indirectly in the conduct of an enterprise dealing with a fencing and illegal distribution of large quantities of stolen securities, through a pattern of racketeering activity. You are charged with that as well?

Yes.

You are charged further that you and William Benjamin were participating in the use of extortion and means to collect, and attempt to collect, an extension of credit, to punish Alfred Barg and Winfried Ense for a nonpayment thereof.

Do you understand that?

A I understand that charge, your Honor.

Q Further, to use, knowingly travel and cause travel, and use, cause to be used, the telephone and mails in interstate and foreign commerce with intent to promote, to establish, to carry on, and facilitate the promotion, management, and establishment and carry out of an unlawful activity.

Do you understand that:

A Yes.

1	paca
2	Q Did you enter into an agreement with other people
3	to do what is charged against you in this indictment?
4	A I condoned it at a point.
5	Q Did you ever deal with other people to do it?
6	I don't mean you sat down and made an agreement, but did you
7	participate with other people, in combination with other
8	people, to do this that you are charged with?
9	A I could only tell you what happened. That's all I
10	could do.
11	Q Answer my question. Yes or no.
12	A I was involved in a sense that I knew at a time
13	there was stolen securities, or counterfeit securities, what
14	ever it may be; that they were involved in a certain deal.
15	Q You knew other people were in on it?
16	Λ Yes.
17	Q You joined in that?
18	A I was in it unknowingly at the beginning, so I was
19	in it, I guess, before I knowlingly was in it.
20	Q After you were in it, did you learn the securities
21	was stolen?
22	Λ Yes.
23	Ω You stayed in it?
24	A Yes.
25	You stayed in it knowing that other people were in

1	pqcq	6	
2	it, in t	his unlawful scheme?	
3		Yes.	
4	Q	You did that intentionally, on purpose?	
5	A	I did it until I could get my money out and get out	E
6	of it.		
7	Q	You knew what you were doing?	
8	À	Yes.	
9	2	You knew that it was wrong, didn't you?	
10	۸	Yes.	
11	Q	You did it anyway?	
12		Yes, your Honor.	
13	Q	Did you meet with William Benjamin in Toots Shors	
14	restaura	nt in New York about July of 1970?	
15	Α	Yes, your Honor, with Paul King.	
16	.3	With Paul King?	
17		Yes.	
18	O	You knew they were in on this scheme of things?	
19		I didn't know anything about a scheme at that time	•
20	I didn't	know Mr. King at that time. I was introduced to his	m
21	on that	day or that night.	
22		You learned about it later, though?	
23	A	Much later. February, 1972.	
24	•	What was the purpose of that meeting? Do you know	?
25	A I	Yes, your Honor. Mr. King had a deal going in	

1 pgcg 7 2 California involving mail trucks. Benjamin had some kind of 3 dealing with the insurance for the mail trucks, and I was there, and I got involved in the tire end of it because I was 5 at that time in the business, or working in the business, in-6 volving retread tires, so I wanted to know if I could sell 7 the tires to put on the mail trucks. 8 What kind of mail trucks? 9 A The postal trucks. 10 Had this anything to do with stolen trucks or 11 stolen mail? 12 A No, your Honor. 13 We further discussed other things, in other words, 14 backgrounds, what Mr. King and I had in common. 15 Q Did you make reservations in February 1972, 16 February 11, to depart to Munich, Germany by Lufthansa Airlines on February 26? 18 Yes. 19 What was the purpose of that? 20 To go to Germany to try to collect my money, to go 21 to Munich. 22 0 For what? 23 The money that was owed to methrough Mr. Benjamin. 24 For what? 0

25

٨

For a loan.

	1	
	2	pgcg
2		Q What did he owe you money for?
	3	A I loaned him the money, your Honor.
	4	Q It had nothing to do with a conspiracy to sell
	5	false securities or counterfeit securities?
	6	A Not at that time.
	7	Q What about the reservation at the Palace Hotel in
	8	Munich, Germany on or about February 26, 1972?
	9	
	10	
	11	on 42nd Street.
		Ω Did those have anything to do with anything charged
	12	in this indictment?
	13	Λ I stood at that hotel
	14	Q Did that have to do in any way to further the
	15	scheme in the indictment?
	16	A Yes. That's where I met a Mr. Ense and Mr. Barg.
	17	I met the two Germans at the hotel the first time and went
	18	up to my room and they discussed treasury bills on counter-
	19	feit They wanted to know if I knew anything about counter-
	20	
	21	feit Coca-Cola stock, and if I could obtain any treasury
	22	bills for them. I told them, "If you get me my money I will
		get you whatever you want," and I would find out for them if
	23	this Coca-Cola stock was counterfeit because I didn't know if
	24	it was counterfeit or what it was.
	25	They asked me if it was counterfeit or good. There

in prison or time you \$10,000 or both?

24

1	paca 10
2	Q How do you plead to count one of this indictment?
3	A Guilty, your Honor.
4	Q Has any promises been made that you will be treated
5	leniently?
6	A No, your Honor. None, whatsoever
7	Q Have any threats been made against you to induce
8	you to plead quilty?
9	A No.
10	Q Have any threats been made against any member of
11	your family?
12	A No, your Honor.
13	Q Has Mr. Epstein made any promises to you that you
14	would be treated leniently?
15	A No.
16 ,	Q Has Mr. Aronwald?
17	A No, your Honor.
18	Q Has any FBI agent or any other government agent
19	made any promises that you would be treated leniently if you
20	pleaded guilty?
21	A Mone whatsoever.
22	O Are you pleading guilty to count one because you are
23	quilty and for no other reason?
24	A For what I stated as to the facts and the true facts,
25	I plead quilty.
İ	

	Q	You	say	you	read	these	charges	in	count	one.	Are
γοι	quilty	y of	ther	n or	not?	Tha	t's what	: I :	want t	o know	•

A I am guilty of what I am charged with, your Honor.

I wanted an opportunity to tell you my facts.

Q I want to know what you did, exactly what you did.

A Thank you, your Honor.

THE COURT: What other counts is he offering to plead guilty to?

MR. EPSTEIN: Count 3, your Honor.

MR. ARONWALD: Page 18 on the indictment.

BY THE COURT:

about July 22, 1970 and August 20, 1970, in the Southern
District of New York, that defendants William Benjamin, Louis
Gittleman, Peter Raia and Vincent Rizzo caused to be transported and transported in interstate commerce, to wit, from
New York, New York to Los Angeles, California the following
securities: Two \$100,000 United States treasury bills, six
\$50,000 United States treasury bills, one \$10,000 United
States treasury note, four \$10,000 United States treasury
bills and one \$10,000 Federal National Mortgage Association
bond, knowing the same to have been stolen, converted and
taken by fraud.

How do you plead on count 3? Guilty or not guilty?

2

3

PGCG

12

4

5

6

7

8

9

10

11

12 13

14

15

16

17

18

10

20 21

22

23

24

25

MR. EPSTEIN: If your Honor will, my client will withdraw his offer to plead guilty to the third count and offer to plead guilty to count 8 on page 20.

THE COURT: Is that agreeable to the government?

MR. ARONWALD: Yes, your Honor.

BY THE COURT:

You are charged in count 8 that from on or about June 1, 1971, to the date of filing of this indictment, in the Southern District of New York and elsewhere, William Benjamin and Vincent Rizzo, the defendants, unlawfully, willfully and knowingly did travel and cause travel between the State of New York and Munich, Germany, and did use the telephone and the mail in interstate and foreign commerce with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of the unlawful activities, to wit, extortion and violation of Title 13, United States Code, Section 891 ff and of the New York State Penal Law, Section 155.40, and thereafter the said defendants did perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of said unlawful activities.

How do you plead?

A I plead guilty on that.

Did you threaten them in any way?

pgcg

A No, your Honor.

MR. ARONWALD: Your Honor, if I can --

THE COURT: Can you tell me what the factual basis is for count 8?

MR. ARONWALD: Your Honor, the government would prove if this case were to be tried that Mr. Rizzo went to Germany on two separate occasions and that upon the occasions threats were made to Mr. Ense and Mr. Barg by Mr. Rizzo they would suffer physical harm unless they paid the money that Mr. Rizzo claimed was owed to him.

In addition, as a result of that fear, Mr. Barg turned over to Mr. Rizzo, in writing, the rights to certain profits of the company owned and controlled by Mr. Barg in Europe.

In addition to that, on one of Mr.Rizzo's trips,
Mr. Rizzo made a telephone call which was recorded pursuant
to a Germany court order authorizing the wire tapping of Mr.
Rizzo's hotel phone in which he instructed Mr. Benjamin to
call Mr. Ense and Mr. Barg and tell them that Mr. Rizzo was
there to collect money, that the money he was collecting
was for some bad people in New York, and that unless these
two gentlemen in Germany paid that money that things could
happen to them.

Your Honor, the government --

1 pycq 2 THE COURT: Did he use the language "bad things"? 3 What is the evidence? What were the threats? 4 MR. AKONWALD: Just that Mr. Rizzo instructed Mr. 5 Benjamin to tell Mr. Erse and Mr. Barg that Mr. Rizzo was 6 merely a messenger boy and represented some very bad people 7 in New York, and he had to come back to New York with \$200,000 8 or there would be trouble. 9 BY THE COURT: 10 Is what Mr. Aronwald said substantially true? 11 Yes. 12 Q Did you do that knowing that it was wrong and you 13 did it intentionally and on purpose? 14 A I told Mr. Benjamin to call up Mr. Ense and Mr. 15 Barg and to explain to them that I am only an errand boy. 16 I don't know about whether the stock was counterfeit or good. 17 I wanted him to tell them my only purpose was to collect the 18 money and for nothing else, that the pressure on me was 19 terrible. 20 Q But you did? 21 A I did it. I told Mr. Benjamin to call them up and 22 explain to them because maybe I was not getting through to

O You knew what you were doing?

A Yes.

23

24

25

them.

1.1		
11		

- Q You were not acting under any mistake or negligence or carelessness?
 - A This was definite, your Honor.
 - Q You did it deliberately and intentionally?
 - A Yes, your Honor.
- any countercounts of this indictment you would be presumed to be innocent under the law. You would have a right to a speedy and public trial by an impartial jury of 12 people or to a trial by the court sitting without a jury, if you waived the jury, consented to a trial without a jury. Upon a trial the burden would be upon the government to establish your guilt beyond a reasonable doubt to the satisfaction of all 12 people on the jury or to the satisfaction of there were a trial without a jury.

You would have a right to remain silent and your silence could not be held against you.

If you wish, you could testify in your own behalf but you cannot be compelled to take the stand, and no inference of quilt could be drawn against you for your failure to do so.

You would be entitled to see and hear the witnesses against you, and your lawyer would have the right to cross-examine.

24

25

	bdcd
	You would be entitled to use the compulsory processe
	of the court to get the witnesses that you wish to offer in
	your own defense and to obtain documentary evidence that you
	would wish to offer in your own defense.
,	If the court accepts your plea of not guilty to
	count one and to count 8, you give up all of these rights
3	with respect to counts 1 and 8.
,	The court will have the same power to sentence you
0	as if you had been found guilty after a trial on those counts.
1	THE COURT: What is the penalty on the count?
2	MR. ARONWALD: 10 years and a fine of, I believe,
3	\$20,000.
4	THE COURT: The court accepts your plea of guilty
5	to court 8. The court can sentence you toten years in
6	prison and a fine of \$20,000.
7	MR. ARONWALD: Your Honor, I do not have the section
18	I expected him to plead guilty to count 3.
19	(Pause.)
20	THE COURT: According to this the penalty is prison,
21	five years, and the fine is not more than \$10,000.
22	MR. ARONNALD: Section 1952?
23	THE COURT: Right.

BY THE COURT: You are to understand that if the court accepts your

> SOUTHERN DISTRICT COURT REPORTERS U.S. CONTUSE FATT SQUARE HEATTH ...

Judge Lloyd MacMahon.

A

1 19 pgcg 2 What court? 0 3 Federal, United States Federal Court. Λ. 4 Is there anyone with you here? 0 5 My mother. My wife was here but she left. A 6 How old are you? Q 7 Α 41. 8 Are you married? 3 9 Λ Yes. 10 What is your wife's name? Q 11 Λ Mary. 12 Do you have any children? 0 13 Λ Yes. 14 Q How many? 15 A Three. 16 How old are they? 17 A The boy is 16, his name is Vincent; another boy is 18 13, his name is Anthony; and there is a girl named Theresa, 19 her age is 6. 20 How far did you go in school? () 21 Third year -- third term. ٨ 22 What? 0 23 Wich school. Λ 24 Where? 0 25 Benjamin Franklin, your Honor. 1.

1

2

3

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ċ

24.

THE COURT: The court will accept the plea.

THE DEFENDANT: Thank you, your Honor.

THE COURT: Is there another application?

MR. EPSTEIN: At this time i would ask that the sentencing be put down for the 20th day of November. I also ask that the sentencing in this matter be adjourned to Judge Bryan. This defendant has two other matters. He pleaded guilty to both of them in front of Judges Bryan and Duffy. The sentence would be in front of Judge Frederick van Pelt Bryan.

MR. ARONWALD: The sentencing is strictly the province of the court. It is not the government's intention to interfere with that province. We leave it up to this court as to whether or not it wishes to grant the application.

THE COURT: The court will grant the application to refer the sentence to Judge Bryan inasmuch as there are three matters and it is appropriate for one judge to consider all three at the same time. I think that that is in the interest of substantial justice for both the people and the defendant.

Do you have another application?

MR. EPSTEIN: To adjourn the writ to the 20th of November, your Honor.

THE COURT: The writ shall be adjourned until November 20.

(Time noted: 4:20 P.M.)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK NEW YORK, N.Y.

VINCENT RIZZO,

Petitioner,)

re: Indictments Nos.

72 Cr. 1332

73 Cr. 672

NOTICE OF MOTION

TO THE HONORABLE COURT:

Please take notice that Vincent Rizzo, will move this
Court for a hearing on a Motion to Vacate Sentence, and to correct
the Docket Entry to conform with the oral sentences imposed, and
to Set Aside Judgment of Commitment, pursuant to the provisions
of Title 28 United States Code, Section 2255, and in respect to
Rules 36 and 43, of the Federal Rules of Criminal Procedure.

That a hearing be conducted on this Motion on the _______ day of ______, 1976 at 10:00 AM in the forenoon, or a date as soon thereafter as designated by the Court.

That the Court issue a Writ of Habeas Corpus Ad Prosequendun to the Warden of the United States Penitentiary, Atlanta, Georgia, Ordering the deliverance of the Petitioner to the Court, at a prior time to the hearing so that he might consult with counsel and prepare his cause.

Vincent Rizzo, Petitioner

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK NEW YORK, N.Y.

VINCENT RIZZO) Petitioner,)	CIVIL NO.
-v-	re: Indictment Nos. 72 Cr. 1332 73 Cr. 672
UNITED STATES OF AMERICA) Respondent .)	

MOTION FOR AN ORDER TO SHOW CAUSE

And now VINCENT RIZZO, hereafter Petitioner, moves and motions this Court to Order the Respondent to SHOW CAUSE why this Petition pursuant with Title 28, U.S.C., Section 2255 should and therefore says that since he is prosecuting the instant cause in Propria Persona this Court in the interest of Justice and fair judicial administration should overlook all errors as to procedural form because;

- (1) Petitioner does not have access to the Federal Rules of Civil Procedure, Title 28, U.S.C., because of his financial inability to purchase the same;
- (2) That pursuant to the ambit of <u>Haines v. Kerner</u>, 404
 U.S. 519 this Court should liberally construe a Pro Se Motion in
 a light most cognizable to a valid claim.

Vincent Rizzo, Petitioner

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK NEW YORK, N.Y.

VINCENT RIZZO) Petitioner,)	CIVIL NO.
-v-	re: Indictment Nos. 72 Cr. 1332 73 Cr. 672
UNITED STATES OF AMERICA) Respondent.)	

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

NOW COMES, VINCENT RIZZO, Petitioner, herein and moves this Honorable Court pursuant to the provisions of Title 28 United States Code, Section 1915 for permission to proceed herein Forma Pauperis in the filing of the attached Motion to Vacate Sentence and to correct the Docket Entry to conform with the oral sentences imposed, and to Set Aside Judgment of Commitment, pursuant to the Provisions of Title 28 U.S.C., Section 2255, and in respect to Rules 36 and 43, of the Federal Rules of Criminal Procedure.

Attached hereto is an Affidavit of Poverty in support of this Motion.

Vincent Rizzo, Petitioner

STATE OF GEORGIA) COUNTY OF FULTON)

AFFIDAVIT OF POVERTY

VINCENT RIZZO, who after being duly sworn, on oath according to law deposes and says:

That he is a citizen of the United States, of legal age, and that because of his poverty he is unable to pay the cost of action or to give any security for the same; and

That he is a pauper within the meaning of the law of Adkins v Dupont, 335 U.S. 331, and

That he seeks redress in good faith to obtain the relief to which he verily believes he is entitled to receive.

WHEREFORE, for all of the above reasons the affiant prays that the Court grant permission to proceed in Forma Pauperis for otherwise Petitioner will be precluded relief because of his inability to pay the cost thereof.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 30 DAY OF 11 1976

source of the U.S. O.

UNITED STATES DIS.RICT COURT SOUTHERN DISTRICT OF NEW YORK NEW YORK, N.Y.

VINCENT RIZZO)	
Petitioner,)	CIVIL NO.
;	re: Indictment Nos.
-v-)	72 Cr. 1332 73 Cr. 672
j	
UNITED STATES OF AMERICA) Respondent.)	

MOTION TO VACATE SENTENCE AND

SET ASIDE JUDGMENT OF COMMITMENT

COMES NOW, VINCENT RIZZO, hereafter Petitioner, respect-fully moves and motions this Honorable Court to issue its Writ of Habeas Corpus, pursuant to Title 28 United States Code 2255, for the following reasons,

Petitioner is presently restrained of his liberty under color of conviction and judgment for violations of Title 18 United States Code, \$371 and \$1952, in the United States District Court, Southern District of New York, wherein sentence was imposed by the Honorable Van Pelt Bryan, District Judge, on December 6,1973; following Petitioner's entered plea of guilty for the above captioned Indictments.

Petitioner believes he is entitled to the relief sought herein, on the ground that his sentences were in violation of Rule 43, Federal Rules of Criminal Procedure; "defendant must be present at sentencing", and also, Rule 36, Federal Rules of Criminal

Procedure: "to correct the judgment and docket entries so as to conform to the oral statement of the sentence",

Furthermore, the Court violated Title 18 U.S.C. **S** 3651, by suspending a sentence without probation, and committing the defendant to a prior sentence instead of to the custody of the Attorney General; Title 18, U.S.C., **S**4082.

STATEMENT OF THE FACTS

At the time of sentencing - December 6,1973 - which was the last time the Petitioner was presented in Court on the above captioned case, the sentence given orally did not include the one (1) day probation on each of the Indictments, Although, the sentence was enhanced, to include the one (1) day probation, which transpired on January 8,1974, the Petitioner was not presented before the Court on that date, nor thereafter. Moreover, the Petitioner was not committed to the custody of the Attorney General or his duly appointed representitive at the time he was sentenced - December 6,1973 - therefore, Petitioner was sentenced in violation of Title 18, U.S.C., \$4082, and \$3651. Also, in violation of Rule 43, of the Federal Rules of Criminal Procedure because of Petitioner's absence at sentencing during the amended judgment; to increase the sentences of both Indictments by one (1) day probation.

Petitioner was sentenced on December 6,1973, and commencement of sentence started immediately thereafter, because of the concurrent status the Petitioner was then under. An amended judgment was made on December 14,1973, without Petitioner ever being present. This amended judgment imposed the additional one (1) day probation to each of the Petitioner's suspended sentences.

A second corrected judgment was made on January 8,1974, which simply stated; "Only change on judgment is that defendant was produced on a Writ of Habeas Corpus and judgment was typed on a judgment and order of probation form."

The fact remains, the Petitioner was never produced on a Writ of Habeas Corpus, nor was in any way physically presented to the Court on January 8,1974. The truth is that on January 8,1974, Petitioner was incarcerated in the United States Penitentiary, Atlanta, Georgia, thus, making it impossible for the Petitioner to be present in Court on January 8,1974.

ARGUMENT

In support of Petitioner's claim, the Second Circuit said in rejecting a similar attempt to increase a sentence to conform with the supposed intention of the sentencing judge; "the possibility of abuses inherent in broad judicial power to increase sentences out-weighs the possibility of windfalls to a few prisoners". "There is, moreover, an objection which adds a constitutional dimension to our unwillingness to permit the government to obtain an increase in the term of imprisonment under a valid count in order to compensate it for the invalidity of the sentences under related counts. We meet here the prohibition of the Fifth Amendment that no person shall 'be subject for the same offense to be twice put in jeopardy of life or limb."

It is well settled that the defendant is not limited to the technicality of conviction alone, but also includes a resentence for the same offense. (citing the Pearce case) (footnotes omitted)

In <u>United States v. Ellenbogen</u>, 390 F2d. 537, (CANY)

1968, "Under this section, federal district court is authorized to suspend imposition of sentence and place defendant on probation but has no power to suspend sentence without also imposing term of probation."

'Once convicted defendant has commenced to serve his sentence no subsequent order suspending execution of balance of sentence and placing him on probation can be entered.' 18 U.S.C., \$3651 - 3656.

In <u>United States v. Sams</u>, 340 F2d, 1014,1020(3rd Cir.) cert denied 380 U.S. 974 85 S.Ct.1336. 4 L.Ed. 2d 270. The Court's authority arises "upon entering a judgment of conviction" 18 U.S.C. 83651, and it terminates when the convicted actually enters upon the service of his prison sentence, <u>U.S. v Murry</u> supra; <u>Affronti v. U.S.</u> 350 U.S. 79, 76 S.Ct. 171, 100 L.Ed 62(1955).

In <u>Bartone v United States</u>, 375 U.S. 52, 11 L.Ed 2d 11, 84 S.Ct.21 "A District Court's enlarging a defendant's sentence in his absence is an error so plain in the light of Federal Criminal Procedure Rule 43 requiring his presence at the imposition of sentence, that it should be dealt with by the Court of Appeals upon defendant's appeal from an order revoking his probation, even though it had not been alleged as error."

"It is more appropriate, whenever possible, to correct

errors reachable by the appeal rather than to remit the parties to a new collateral proceeding, such as a motion to correct an illegal sentence under Federal Criminal Procedure, Rule 35; hence the Supreme Court will direct, upon review of a judgment of the Court of Appeals affirming an order revoking defendant's probation, correction of the sentence, where the District Court enlarged the sentence of confinement of one year by adding one (1) day in the defendant's absence, in violation of Federal Criminal Procedure Rule 43, requiring a defendant's presence at the imposition of sentence."

18 U.S.C., 84082, 'directs the federal courts to commit a person convicted of an offense against the United States to the custody of the Attorney General and.... Petitioner was not committed - at the time of sentencing on December 6,1973 - to the custody of the Attorney General or his duly appointed representive on his sentences, but was in fact committed to the extent of a sentence he was presently serving which was 15 years.

If it was the Court's intention on December 6,1973, to sentence Petitioner to a sentence that would go beyond the sentence that the Petitioner was presently serving, it would have surely done so. However, in contemplating on the illegality of the two suspended sentences, and the consequences of such, one may thus conclude that the only remedy lies in the expungement of both convictions from the record. Since, it was the Court's intention apparently to be merciful by suspending a five year sentence, and a ten year sentence, it cannot now impose an additional sentence of one (1) day probation - towards each of the suspended sentences

A 65

for the sole purpose of legitimation.

CONCLUSION

The circumstances of this case at bar, as outlined in the proceeding statement of fact, mandate Petitioner's Motion, since the issue is not why it happened, but rather, what can be done to rectify the mistake, without enhancing the punishment. IT IS SO PRAYED.

Respectfully submitted,

SWORN TO AND SUBSCRIBED BEFORE ME

THIS JO DAY OF

Notary Public

Fish Older Appearing by the Act of 1. 7 . 1.05 to Admiration Ouths (18 U.S.C. 4000).

CERTIFICATE OF SERVICE BY MAIL

I have mailed a copy of the foregoing Motion For An Order To Show
Cause, A Motion For Leave To Proceed In Forma Pauperis, An Afffdavit
Of Poverty, A Notice Of Motion and Motion To Vacate Sentence And
etc., to the Office of the United States Attorney, for the Southern
District of New York and, to the Office of the Clerk, for the
Southern District of New York, at the U.S.Courthouse, Foley Square
New York, N.Y. 10007, by placing one original and two copies of
the above Motions to be mailed by Certified Mail, return receipt
requested, from the Clerk's Office, and one copy to the United
States Attorney, also Certified Mail, return receipt requested.
On this the _____day of ______,1976.

Vincent Rizzo Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME

THIS SCHAY OF 1, 2, 1970

Notary Public

Parala Officer: Authorized by the Act of 1647 /. 1955 to Administer Ouths (18 U.S.C.

UNITED STATES DISTRICT COURT SCUTHERN DISTRICT OF NEW YORK NEW YORK, N.Y.

UNITED STATES OF AMERICA,

-v-

In Re: 73 CR. 672

VINCENT RIZZO,
Defendants

TO THE HONORABLE L. MACMANION, DISTRICT JUDGE:

Please take notice that VINCENT RIZZO, the defendant, will move this Court for a hearing on a Motion to Withdow His Plea of Guilty pursuant to Rule 32 (d) of the Federal Rules of Criminal Procedure.

That a hearing be conducted on this Motion on the ____ day of December, 1976 at 10:00 in the forenoon, or a date thereafter as designated by the Court.

Respectfuely submitted,

Vincent J, Rizzo, Pro Se

SHITTED STATES DISTRICT COURT SHITTERN DISTRICT OF NEW YORK NEW YORK, N.Y.

UNITED STATES OF AMERICA,

-V-

In Re: 73 CF 672

VINCENT RIZZO,

Defendant.

MOTION FOR AN ORDER TO SHOW CAUSE

And now VINCENT RIZZO, the Defendant, moves and motions this Court to Order the Government to SHOW CAUSE why this Motion pursuant to Rule 32 (d) should not be heard, that since the defendant is prosecuting the instant cause in Propria Persona, this Court, in the interest of Justice and fair judicial administration, should overlook all errors a s to procedural form because;

- (1) Defendant does not have access to the complete Federal Rules of both Criminal and Civil Procedure, Title 18, and 28, U.S.C., because of his financial inability to purchase the same;
- (2) That pursuant to the ambit of <u>Haines v. Kerner</u>, 404 U.S. 519 this Court should liberally construe a Pro Se Motion in a light most cognizable to a valid claim.

Respectfully submitted

Vincent J. Rizzo, Pro Se

SOUTHERN DISTRICT OF NEW YORK NEW YORK, N.Y.

UNITED STATES OF AMERICA.

-٧-

In 80: 73 CA 672

VINCENT RIZZO,

Defendant,.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

NOW COMES, VINCENT RIZZO, the Defendant herein and moves the Honorable Court pursuant to the provisions of Title 28 United States Code, Section 1915 for permission to proceed herein Forma Pauperis in the filing of the attached Motion To Withdraw Plea of Guilty, pursuant to Rule 32 (d), of the Federal Rules of Criminal Procedure.

Attached hereto is an Affidavit of Poverty in a upport of this Motion.

Respectfully submitted,

Vincent J. Kizzo, Pro Se

STATE OF NEW YORK)

: ss
COUNTY OF NEW YORK)

AFFIDAVIT OF POVERTY

VINCENT RIZZO, who after being duly sworn, on oath according to law deposes and says:

That he is a citizen of the United States, of legal age, and that because of his poverty he is unable to pay the cost of action or to give any security for the same; and

That he seeks redress in good faith to obtain the relief to which he verily believes he is entitled to receive; and

That he is a pauper within the meaning of the law of Adkins v. Dupont, 335 U.S. 331.

WHEREFORE, for all of the above reasons the affia nt prays that the Court grant permission to proceed in Forma Pauperis for otherwise the Defendant will be precluded relief because of his inability to pay the cost thereof.

Vincent, J. Rizzo

SWORN TO AND SUBSCRIBED BUFFORE ME. THIS (CAR DAY OF DECEMBER, 1976

Notary Public

.

J. L. Y.A. . . .

SOUTHERN DISTRICT OF NEW YORK NEW YORK, N.Y.

UNITED STATES OF AMERICA,

-v-

In Re: 7.3 CR. 672

VINCENT RIZZO,

Defendant.

MOTION TO WITHDRAW PLEA OF GUILTY

GOMES NOW, VINCENT RIZZO, the Defendant, respectfully moves and motions this Honorable Court to permit the defendant to withdraw his plea of guilty pursuant to Rule 32 (d), of the Federal Rules of Criminal Procedure, for the following reasons:

Defendant is presently awaiting sentencing, therefore, he relies on the provision set forth in Rule 32 (d) "A motion to withdraw a plea of guilty of nolo contenders may be made only before sentence is imposed or imposition of sentence is suspended;..."

Defendant believes he is entitled to the relief sought herein, on the ground that his plea of guilty was in violation of Rule 11, Federal Rules of Criminal Procedure, in that the plea did not meet the voluntary, knowing, and intelligent standard to satisfy the waiver of constitutional rights.

STATEMENT OF THE FACTS

At the time of the plea (October 10,1973) the colloquy of the defendant clearly indicated that there was not a qualified admission of guilt, nor a conclusive understanding as to the nature of the charges against him. The fact remains, the defendant's responses to the Court's

questions were more akin to a protestation of innocence rather than a n expression of guilt - as conclusively shown within the record of the plea.

There is nothing in the record that reveals that the defendant knew the Law definition of "conspiracy", nor the other elements necessary to establish culpability towards those crimes pled to in the Indictment. The record in itself is completely devoid of a determination by the Court that the defendant voluntarily and knowingly made a satisfactory plea of guilty. Moreover, neither was it established that there was a factual basis for the plea; with intent to resort to violence. Peintedly enough, the defendant's statement at the time of the plea demanstrated consistency with every reasonable hypothesis of innocence. See United States v. Ferg, 504 F2d 914, 916-17 (5th Cir. 1974).

In Rizzo v. United States, decided May 19,1975, in the U.S. Court of Appeals for the Second Circuit, slip op. 3599, "While we agree with the government's assertion that the reading of the indictment coupled with defendant's admission that he committed the acts charged therein may, in some instances, satisfy the factual basis requirements, Irizarry v. United States, at 986, n.7, this is not the case. Not only did the district court fail to read the indictment, merely paraphrasing it, but Rizzo did not unequivocally admit that he committed the acts charged therein, stating only that he understood his roll in that."

As reflected in the record of the plea (October 10,1973), and in view of this defendant's immediately subsequent denial - upon the Court's inquiry - as to the requisite towards involvement in the allege crime, coupled with the defendant's ambiguous statement establishing non-related charges in the Indictment, it should therefore be insufficient to meet the factual basis standard set forth in United States v. Steels, 413 F2d 967, 969(2nd Cir. 1969)

and approved in Irizarry, 408 F2d 968, n.9, which makes it clear that:

"particulary where more than one defendant is charged a sufficient statement of the acts and intent of the particular defendant, what the defendant did and intended, is is necessary to an intelligent determination of whether there was a factual basis for the plea."

CONCLUSION

The circumstances of this case at bar, a s would be lucidly shown in the record - at the time of pleading - will suffice to the Court's granting of this Motion. Furthermore, a Hearing would be in accord to determine, for the benefit of justice, the veraciousness of this defendant's claim, and also to illuminate the facts which said claim are predicated upon.

IT IS SO PRAYED.

Respectfully submitted,

VINCENT J. RIZZO, Pro Se

CERTIFICATE OF SERVICE

I, Vincent Rizzo, the Defendant, hereby certify that I have caused to be delivered a copy of the foregoing Motion For An Order To Show Cause & etc., to the Office of the United States Attorney, for the Southern District of New York. And an original and one copy to the Clerk of the Court, for the Southern District of New York, U.S.Courthouse, Foley Square, New York, N.Y. 10007, And, one copy to the Court in where the case stands.

Vincent J. Rizzo, Pro Se

SWORN TO AND SUBSCRIBED BEFORE ME

THIS // LDAY OF DECEMBER, 1976

. Notary Public

The Yala Land

AFFIDAVIT OF MAILING

STATE OF NEW YORK)	
) ss.:	
COUNTY OF NEW YORK)	
and says that he is employed in	2/ haing duly sworn denoses
and cave that he is employed in	the office of the United States
and says that the is emproyed in	t C New Year
Attorney for the Southern Distri	ct or New York.
	. 1.

he served copy of the within the by placing the same in a properly postpaid franked envelope addressed:

Vincent J Rizzo # 77336

P.O. Boy 4000

Springfield, Missouri 65802

Sarbara

And deponent further says that She sealed the said envelope and placed the same in the mail box for mailing at the United States Courthouse Annex, 1 St. Andrew's Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

27 day of April 1977

Jacob Laufer

Notary Public State of How York
the 24-1001/1
Constituted in Kings Southy
Commission Expires March 30, 19......